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91st session
Agenda item 12

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**REPORT OF THE LEGAL COMMITTEE ON THE WORK
OF ITS NINETY-FIRST SESSION**

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A INTRODUCTION

1 The Legal Committee held its ninety-first session at IMO Headquarters from 24 to 28 April 2006, under the chairmanship of Professor Lee-Sik Chai (Republic of Korea).

2 The session was attended by delegations from the following Member States:

ALGERIA	LATVIA
ANTIGUA AND BARBUDA	LIBERIA
ARGENTINA	LITHUANIA
AUSTRALIA	MALAYSIA
BAHAMAS	MALTA
BANGLADESH	MARSHALL ISLANDS
BELGIUM	MEXICO
BELIZE	MOROCCO
BOLIVIA	MOZAMBIQUE
BRAZIL	NETHERLANDS
BULGARIA	NEW ZEALAND
CANADA	NIGERIA
CHILE	NORWAY
CHINA	PANAMA
COLOMBIA	PERU
CUBA	PHILIPPINES
CYPRUS	POLAND
DEMOCRATIC REPUBLIC OF THE CONGO	PORTUGAL
DENMARK	REPUBLIC OF KOREA
DOMINICAN REPUBLIC	RUSSIAN FEDERATION
ECUADOR	SAUDI ARABIA
EGYPT	SERBIA AND MONTENEGRO
ESTONIA	SINGAPORE
FINLAND	SOUTH AFRICA
FRANCE	SPAIN
GERMANY	SWEDEN
GHANA	SWITZERLAND
GREECE	SYRIAN ARAB REPUBLIC
HONDURAS	THAILAND
INDIA	TURKEY
INDONESIA	TUVALU
IRAN (ISLAMIC REPUBLIC OF)	UKRAINE
IRELAND	UNITED KINGDOM
ITALY	UNITED STATES
JAMAICA	URUGUAY
JAPAN	VANUATU
KENYA	VENEZUELA

and the following Associate Member of IMO:

HONG KONG, CHINA

3 A representative from the International Labour Organization participated in the session.

4 Observers of the following organizations took part in the session:

EUROPEAN COMMISSION (EC)
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)
INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL SHIPPING FEDERATION (ISF)
INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)
INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
INTERNATIONAL MARITIME COMMITTEE (CMI)
INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH)
BIMCO
INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES (IACS)
INTERNATIONAL ASSOCIATION OF PRODUCERS OF INSURANCE AND
REINSURANCE (BIPAR)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
INTERNATIONAL GROUP OF P AND I ASSOCIATIONS (P&I CLUBS)
INTERNATIONAL COUNCIL OF CRUISE LINES (ICCL)
WORLD NUCLEAR TRANSPORT INSTITUTE (WNTI)

5 In welcoming participants, the Secretary-General extended a special welcome to the Committee's new Chairman, Professor Lee-Sik Chai of the Republic of Korea, to whom he wished good luck and success in the discharge of his duties.

He alluded to the adoption, by the International Conference on the Revision of the SUA Treaties, in October 2005, of two new protocols – the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, both of which had been opened for signature at IMO Headquarters from 14 February 2006 to 13 February 2007 and would remain open thereafter for accession. There were currently six signatories: Australia, France, Finland, Norway, Sweden and the United States had signed both Protocols, subject to ratification. Achieving their expeditious entry into force and global implementation was now the major task, in order to advance the fight against international terrorism.

Similar expeditious action, the Secretary-General continued, was required with regard to the recently-adopted ILO Maritime Labour Convention, 2006, which consolidated and updated existing ILO maritime conventions and recommendations adopted since 1920. All Governments with an interest in maritime affairs should be urged to accept this Convention as soon as possible, to ensure the widespread and effective implementation which the maritime community needed and seafarers deserved.

Turning to the Committee's agenda, the Secretary-General highlighted the priority item – the draft wreck removal convention, which the Committee had been considering for some time. Once adopted, it would provide the legal basis for the removal, from States' EEZs, of wrecks posing a hazard to navigation and to the marine and coastal environments, or to both. It would also safeguard the rights and specify the duties of owners of wrecked ships to remove them by their own means, or with the assistance of salvors. Development of this treaty had necessarily taken second place to the revision of the SUA treaties, but the Secretary-General hoped that the Committee would be able approve the draft at this session, in order for it to be considered by a diplomatic conference in 2007.

With regard to the fair treatment of seafarers, the Secretary-General referred to the Committee's compliance, through the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers, with Assembly resolution A.987(24) entitled "Fair treatment of seafarers in the event of a maritime accident", which called for the development of recommendatory guidelines, as a matter of urgency, to ensure that seafarers are fairly treated and their rights are not violated following a maritime accident. Thanks to the co-operation between IMO and ILO and the good will that had prevailed between the Social Partners and States on this matter, the draft guidelines had been completed expeditiously and a high degree of consensus had been achieved within the Group. Although further elaboration may be necessary, given the complexity of the subject matter, the Secretary-General was confident that the Committee would be able to confirm the outcome of the work already achieved.

The Assembly had authorized that the guidelines be promulgated by appropriate means and reported to the twenty-fifth regular session of the IMO Assembly and to the 295th session of the ILO Governing Body, accordingly indicating both the sense of urgency which the two Organizations attached to their development and the trust placed in the Committee to complete the task. Adoption of the guidelines at this session would be a strong indication to seafarers of the commitment of both Organizations to their welfare.

The Committee had also been active in dealing with the problem of the abandonment of seafarers, through the work of the Joint IMO/ILO *Ad Hoc* Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers. The Group had developed Guidelines on the provision of financial security in such cases, which had been adopted in November 2001, both by the IMO Assembly – through resolution A.930(22) – and the ILO Governing Body, and had taken effect in January 2002.

Through the Joint Working Group, the Committee had monitored and analyzed the implementation of the Guidelines and, with a view to supporting these efforts further, in February 2006, the Secretary-General and the Director General of ILO had sent joint letters to nine States urging them to make every effort to help resolve ten identified cases of seafarers who had been abandoned on ships flying their flag. Seven of those States had already replied and three of the ten cases had been satisfactorily resolved. The monitoring process would continue with regard to the remaining unresolved cases and follow-up letters would be sent to those States that had not yet responded to the joint request.

The Secretary-General then turned to the matter of the entry into force of the 1996 International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (the HNS Convention), developed by the Committee, which, despite the Committee's continuing efforts with regard to its ratification and implementation, still had not achieved a sufficient number of ratifications to meet its entry into force requirements. The complexity of the instrument was possibly one explanation for this and the Secretary-General hoped that the undertaking to agree on an interpretation of article 1.5(a)(ii) of the Convention, may assist in removing one obstacle to its ratification and leading to better results in the near future.

He was, however, pleased to note the several submissions containing commentary and proposals on two outstanding key issues relating to the 2002 Athens Protocol to enable its entry in force in the near future. These concerned the ability of the insurance market to provide compulsory cover up to the general limits established under the Convention and its ability to provide insurance cover for injury and damage arising out of acts of terrorism. This latter issue, especially, was not confined to the Athens Protocol, so finding a practical solution assumed an even greater urgency. Recent tragic events, such as the sinking of the ferry **al-Salam Boccaccio 98** in the Red Sea

in February 2006, with heavy loss of life, could only serve to underline the need to have in place satisfactory insurance arrangements for injured passengers or the families of those lost at sea.

The Secretary-General then turned to a few additional issues of a more general nature. The first concerned security at IMO meetings. Complacency about security was not an option, and no compromise could be allowed on this critical issue. All delegates should therefore abide by the security rules in place, as outlined in the updated security information provided in Circular letter No.2692, issued on 20 January 2006.

Secondly, he singled out the Voluntary IMO Member State Audit Scheme as the catalyst in IMO's numerous, persistent and consistent attempts to eliminate sub-standard shipping. Following the decisions of the Council and Assembly in 2005, based on sound advice provided by the MSC, MEPC and the Technical Co-operation Committee, the Scheme was ready for implementation. He encouraged Member States to offer themselves for audit, as requested by the Assembly in resolution A.974(24); to nominate auditors to enable the selection of audit teams to conduct the audit of volunteering Members; and to nominate qualified auditors to participate in the regional training courses the Organization was planning to convene, further to those which had already been convened in Slovenia, Sri Lanka and Ecuador, to provide uniform training to auditors to be used for the effective implementation of the Scheme.

Having pledged his personal commitment to the Scheme, he expressed appreciation for the support and co-operation of anyone in a position to contribute to its wide and effective implementation. Eighteen Governments had already notified their preparedness to be audited. The date of 31 March 2006 was the deadline stipulated in Circular letter No.2687, from which the initial IMO audit timetable would be developed for those States that had volunteered by that date to be audited. However, that deadline did not preclude other Member States from volunteering thereafter, and he looked forward to receiving many more offers of the same type in the near future.

Concerning the planned refurbishment of the Headquarters Building, the Secretary-General reminded delegates that the building would be closed for approximately 12 months between the summers of 2006 and 2007, during which period, the Secretariat would move to offices provided by the Host Government, located at 55 Victoria Street, and the meetings of the Council, Committees and Sub-Committees would be held elsewhere in London and abroad. As far as the next meeting of the Legal Committee was concerned, arrangements were being made for it to be held in Paris, at the UNESCO Headquarters, from 16 to 20 October 2006, as scheduled. Furthermore, the Government of Kenya had generously offered to host the forthcoming diplomatic conference on wreck removal, tentatively scheduled to be held at the UNEP Headquarters in Nairobi from 14 to 18 May 2007, subject to sufficient progress being made by the Committee in the preparation of the new treaty instrument.

He expressed the hope that delegates would be prepared to face, with resolute spirit and good humour, any discomfort and disruption from normal operations emanating from the refurbishment. The Organization would endeavour to provide the quality service delegates were accustomed to. However, their assistance, for example, by limiting their submissions to the minimum number of pages possible and their acceptance of reports from correspondence and working groups and sub-committees that were shorter than normal, would be greatly appreciated.

In conclusion, the Secretary-General referred to the complexity and sensitivity of some of the items the Committee had been invited to deal with and underlined his confidence that, with good will, co-operation and commitment and under the able direction of Professor Chai, this would be another successful and fruitful session.

6 Many delegations congratulated Professor Lee-Sik Chai, the new Chairman of the Committee, and wished him well in his new role.

7 The delegation of Egypt thanked the Secretary-General for the prompt action taken by IMO following a request for assistance in the investigation of the **al-Salam Boccaccio 98** ferry disaster in the Red Sea on 3 February 2006. The delegation also thanked other States which had offered assistance to alleviate the consequences of this tragedy.

8 The Committee expressed its deepest condolences to the delegation of Egypt for the terrorist attack in the Red Sea resort of Dahab, on 24 April 2006, and to all those who lost their lives or were injured in the attack, as well as to their families and friends.

Adoption of the agenda

9 One delegation referred to proposed agenda item 6, Places of refuge, and expressed doubts as to whether this should be included in the agenda, in light of the conclusive outcome of the debate on the issue at the previous session of the Committee. This view was supported by another delegation. However, the Committee decided to adopt the provisional agenda, unchanged (attached at annex 1).

10 A summary of the deliberations of the Committee with regard to the various agenda items is set out hereunder.

B REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

11 The Committee noted the report by the Secretary-General that, with the exception of two delegations, the credentials of the delegations attending the session were in due and proper form.

C DRAFT CONVENTION ON WRECK REMOVAL (agenda item 3)

12 The Committee continued with its consideration of this agenda item.

13 The delegation of the Netherlands, as lead delegation for the intersessional consultations, introduced document LEG 91/3. In so doing, it summarized the work done since the ninetieth session of the Committee, held in April 2005. It then referred to the main features of its submission. Annex 1 contained the text approved by the Committee (with amendments introduced at the last session in italics) as well as text in bold reflecting new proposals developed intersessionally. Explanatory notes on the amendments in annex 1 were included in annex 2. Annex 3 contained proposals which had not been incorporated in the revised texts, together with explanatory comments by the Netherlands regarding the decision not to include these proposals. Annex 4 contained a flowchart describing the sequence of events dealt with in the draft treaty.

14 The lead delegation thanked those delegations which had participated in the intersessional work and expressed the hope that substantive discussion on the draft convention would be concluded at this session. The lead delegation also expressed its gratitude to the Government of Kenya for its offer to host the diplomatic conference during 2007 in Nairobi. In turn, many delegations commended the work the lead delegation had performed in developing the draft convention.

15 The Committee decided to undertake an article-by-article reading of the draft convention, focussing only on the new proposals printed in bold in the draft articles, and noted that matters of a purely drafting nature would be addressed at a later stage.

Draft article 1 – Definitions

16 The Committee considered the definitions contained in draft article 1.

“Warship” (paragraph 12)

17 In particular, the Committee considered the definition of “warship” in paragraph 12, proposed as a result of the intersessional consultations. The Committee noted that this definition reflected the definition contained in article 29 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

18 Some delegations suggested that the definition was needed as a means of providing a clear explanation of the kind of ships which should be excluded from the operation of the draft convention, in accordance with article 4. These delegations also expressed the view that the definition should be modelled on article 29 of UNCLOS. It was also suggested that additional text should be included to specify that warships not owned, but operated by a State, for example, vessels chartered in, would also be excluded from the scope of the convention.

19 The majority of delegations that spoke, however, considered that this definition was not necessary, since it was contained in UNCLOS and was widely accepted as a reference for the purpose of addressing the question of exclusion of warships from the scope of other treaties. In this regard, it was noted that, while several other IMO treaties contained exemptions for warships, none of them provided a definition like the one which was being proposed in connection with the draft convention.

20 The Committee decided not to include a definition of “warship”. The Committee also agreed that, for the purpose of the draft convention, the meaning of the term “warship” would be that defined in article 29 of UNCLOS.

“Affected State” (paragraph 10)

21 A proposal was made to include a reference to a “primarily” affected State, in view of the fact that more than one State could be affected by a wreck. The Committee did not agree to this proposal on the grounds that the definition, to be precise, should be restricted solely to indicating the location of the wreck.

22 The Committee took note of the concern expressed by some delegations that States are referred to in a variety of ways, e.g. “affected State”, “coastal State”, which might lead to confusion.

“Registered Owner” and “Operator of a Ship”

23 The Committee noted the concern of one delegation regarding possible drafting discrepancies in the definition of “registered owner”, which included a reference to ships that might not be subject to registration, and in the definition of “the operator of a ship”, which included a reference to “the owner of the ship”.

24 One delegation announced its intention to present a proposal in relation to paragraph 1 of article 1 at the Committee's ninety-second session in October 2006.

25 Subject to the above, the Committee confirmed its approval of article 1.

Draft articles 2 to 7

26 The lead delegation noted that these draft articles had been approved at the Committee's ninetieth session. The Committee confirmed its approval of these articles.

Draft article 8

27 The lead delegation noted that this draft article had been approved at the Committee's ninetieth session. As a result of intersessional discussions, the words "obtaining knowledge" had been amended to read "becoming aware". The Committee confirmed its approval of this article with the amended wording.

Draft article 9

28 The lead delegation noted that this draft article had been approved at the Committee's ninetieth session. As a result of intersessional discussions, the words "the wreck marking" had been amended to read "the marking of the wreck". The Committee confirmed its approval of this article with the amended wording.

Draft article 10

Paragraph 1

29 The Committee noted that paragraph 1(b) appeared in bold type in error and that the last four paragraphs needed to be renumbered.

Paragraph 3

30 One delegation suggested the phrase "another interested party" as used in paragraph 3 was unclear and should be clarified or deleted. The lead delegation explained that the phrase was intended to encompass other parties such as insurers. This explanation was supported by other delegations who said the wording reflected the fact that more than one party might have a financial interest in the ship and would be able to provide evidence of financial security to the competent authority. In view of this explanation, the Committee agreed to retain this phrase.

New paragraph 11

31 One delegation recalled a proposal it had made to the intersessional group (in document LEG 91/3, annex 3, page 6) to add a new paragraph 11 to read as follows: "The information referred to in this article shall be provided by the Affected State to the registered owner as set out in the reports referred to in article 6, paragraph 2.". This delegation explained that the amendment would clarify that the Affected State's obligation to inform the registered owner (under draft article 10, paragraph 1(a)) was connected to and consistent with the obligation of all States Parties (under draft article 6) to require the master and operator of a ship to report the identity and principal place of business of the ship's registered owner.

32 The observer delegation of the Comité Maritime International (CMI) suggested that the wording of the proposed new paragraph, if agreed by the Committee, would be improved if the words “as set out in” were replaced by the words “as identified in”. This proposal was supported by a number of delegations.

33 The lead delegation said the proposed new paragraph would be superfluous in light of the wording of draft article 10, paragraph 1(a), which required the Affected State to inform the registered owner that the wreck constituted a hazard. This view was supported by some delegations.

34 The view was expressed that it was not appropriate for a convention to impose an obligation on a State Party in relation to private parties. A convention should only impose obligations as between the States Parties.

35 While it was agreed there may be no necessity for the proposed new paragraph, it was suggested that it would add clarification to the current text. Furthermore, it was noted that the proposal did not require another party to take out insurance, only to come forward to present evidence of financial security. Additionally, it was suggested that the new paragraph would be logical, since draft article 6 would put the onus on the operator of the ship to provide information on the registered owner to the Affected State, and, under the proposed paragraph under draft article 10, the Affected State would notify the registered owner of its obligations.

36 In reply to a question on whether an Affected State would be precluded from recovering the cost of wreck removal if it did not comply with the proposed obligation to notify the registered owner, the proposing delegation said it would be a condition precedent but this condition was linked to the obligation under draft article 6 for the master and the operator of the ship to provide information on the registered owner. It was noted by another delegation that if the Affected State was not properly informed of the identity of the registered owner under draft article 6, then its ability to recover costs of removal would be limited.

37 The Committee agreed to include the proposed new paragraph 11 subject to the replacement of the words “as set out in” by the words “as identified in”.

38 The Committee confirmed its approval of this article, subject to correction of the numbering of the last four paragraphs (7 to 10) and the addition of new paragraph 11, as amended.

Draft article 11

39 The lead delegation recalled that paragraphs 1 and 3 had been approved by the Committee, at LEG 90 and noted that paragraph 2 had been revised, as a result of intersessional discussions, to reflect article 6 of the Bunkers Convention.

40 With regard to paragraph 1, it was recalled that the problem of liability in respect of acts of terrorism still needed to be resolved with respect to all liability and compensation regimes, and work was underway to address this problem in the context of the Athens Convention. This problem was noted on page 6 of annex 3 to document LEG 91/3.

41 Although the view was expressed that a common solution was needed for all liability and compensation regimes, the majority of the delegations who spoke said the solution which may be agreed for the Athens Convention would not necessarily be appropriate in the context of wreck removal. Among the differences noted in this regard were the market capacity for insurance, and

the limited scope of the draft wreck removal convention which, in comparison with the Athens Convention, focussed only on the expenses of removing a wreck.

42 The observer delegation of the International Group of P and I Associations (P&I Clubs) agreed there was a significant difference between the Athens Convention and the draft wreck removal convention, and a common solution on terrorism may not be suitable. However, this observer delegation also suggested that the problem of terrorism needed to be resolved under the draft wreck removal convention even if no solution was found for the Athens Convention, since current cover for the costs of wreck removal did not extend to acts of terrorism.

43 The Committee requested the lead delegation to give this matter further consideration during the intersessional period, with the aim of offering proposals for the Committee's consideration at its next session. Subject to this outstanding issue, the Committee approved paragraph 2 and confirmed its approval of this article.

Draft article 12

44 The lead delegation recalled that the Committee, at its ninetieth session, had approved, in principle, the text of draft article 12, subject to reaching agreement on a suitable wording for the chapeau of this article.

45 Some delegations expressed the view that the words "*in conflict with*" were confusing and needed to be changed. In this connection, reference was made to the wording "established or explicitly excluded" proposed by the CMI at the ninetieth session of the Legal Committee.

46 It was further recalled that the words "*in conflict*" had been agreed upon at the previous session and that the question was not only about avoiding the possibility of double compensation, but also that other treaties may not establish liability.

47 The observer delegation of the CMI proposed replacing the wording "*liability for such costs would be in conflict with:*" in the chapeau of paragraph 1 of draft article 12 with the wording "such costs are recoverable under:". This was supported by some delegations.

48 Other delegations preferred the existing wording, on the grounds that it had already been approved by the Committee, and that, regardless of the recoverability of the costs, should more than one convention be applicable there would be "*conflict*". Other delegations, however, expressed the view that they preferred the wording which followed the precedents established in the HNS Convention and the CLC.

49 The Committee decided to maintain the text of the chapeau of paragraph 1 of draft article 12 unchanged. Interested delegations were invited to submit alternative proposals to the ninety-second session of the Committee.

Draft article 13

Paragraph 1

50 With reference to draft article 13, the lead delegation explained that the words "at least", in paragraph 1, had been inserted at the Committee's eighty-ninth session, to reflect the current practice of some States to impose higher limits of liability than under the LLMC, which are guaranteed by financial insurance coverage. In that sense the inclusion of the words "at least" was merely a drafting matter and would allow this practice to be consistent with the compulsory

insurance obligations under the draft convention. This would also accommodate those States which had made a reservation under the LLMC for higher limits and would like to apply these limits also as regards the provisions on financial guarantees. The lead delegation further recalled that, at the same session, one delegation had proposed replacing those words with the words “that is equal”. There had been no agreement in the Committee in this regard and the issue had been studied further intersessionally.

Square brackets in paragraph 1

51 The Committee agreed that, at its October session, it would discuss the possible figures for inclusion in the square brackets in paragraph 1 regarding the length of ships in respect of which it would be required to maintain compulsory insurance. The Committee requested the Secretariat to provide examples from other IMO conventions to the lead delegation which might assist it in its intersessional consultations.

52 One delegation noted, in this connection, that the Secretariat should also provide advice as to which IMO conventions used metric figures as opposed to tonnage figures.

53 In this connection, the Committee noted a statement by one delegation that the length of the ships and the possibility of extending the application of the treaty to the territorial waters were linked and could create problems to several States. Depending on the length of ships, those States would prefer to limit the application to the EEZ.

54 The lead delegation noted that if the words “at least” were deleted, it would not be possible to take advantage of the higher coverage offered by the P&I Clubs and would lead to discrepancy as regards article 7.1 of the Bunker Convention. This was supported by one delegation who expressed the view that the convention should not restrict the capacity for States to impose higher limits.

55 Some delegations were of the view that the words “at least” should be deleted in order to ensure legal certainty. The point was also made that retaining these words would allow insurance to be set above the maximum limit prescribed by the LLMC, e.g. in case use was made of the relevant reservation to impose higher limits.

56 The Committee decided to delete the words “at least”. The Secretariat, in consultation with interested delegations was invited to submit possible alternative wording to the ninety-second session of the Committee, for example, “equal to”, or “not exceeding”.

Paragraph 2

57 The lead delegation explained that the first part of the sentence had been deleted as a consequence of the deletion of paragraphs 2 and 3 of article 3. One delegation proposed replacing the words “waters subject to their jurisdiction” in this paragraph, with the words “their internal waters and territorial seas”.

58 One delegation noted that paragraph 2, as amended, would allow State Parties to apply article 13 to their territorial waters but would prefer that the opt-in provision applied not only to article 13, but also to the other articles of the convention. This view was supported by some delegations. One delegation suggested that the convention as a whole should apply also in the territorial sea, but with an explicit provision to the effect that the coastal State’s jurisdiction in the territorial sea shall not be restricted thereby. This view was supported by some delegations.

Some other delegations expressed difficulties with this proposal, which would mean that the whole scheme of the draft convention would have to be reworked.

59 The Committee decided to maintain the text unchanged. Interested delegations were invited to submit possible alternative proposals to the Committee's ninety-second session.

Paragraph 3

60 The lead delegation explained that, following discussions at LEG 90 regarding the possible deletion of the words "or certified" in the second sentence of paragraph 3, and after further intersessional consideration, these words were retained, in line with precedents in other IMO liability and compensation conventions. In its view, these words should be maintained in order to be consistent with other IMO liability and compensation conventions.

61 The Committee agreed to maintain the words "or certified".

Paragraphs 4 to 10

62 The Committee confirmed its approval of these paragraphs.

Paragraph 11

63 The lead delegation explained that the inclusion of the proposed words "of liability under any applicable national or international regime" and deletion of the words "pursuant to article 11, paragraph 2" was a consequential amendment to reflect the fact that article 11, paragraph 2, no longer established a right to limitation for the registered owner, but merely referred to applicable national or international limitation regimes.

64 One delegation questioned the reason for substituting the words "pursuant to article 11, paragraph 2" with "of liability under any applicable national and international regime". The lead delegation explained that the wording had been revised to reflect the fact that article 11, paragraph 2 no longer establishes a right of limitation for the registered owner but merely refers to applicable national or international limitation regimes such as CLC, HNS and Bunkers.

65 The Committee confirmed the approval of this paragraph with the deletion of the words "pursuant to article 11, paragraph 2" and inclusion of the words "of liability under any applicable national and international regime".

Paragraphs 12 to 15

66 The Committee confirmed its approval of these paragraphs.

Draft article 14

67 The Committee confirmed its approval of this article.

Draft article 15

68 The Committee confirmed its approval of this article.

Draft article 16

69 One delegation proposed that article 16 be amended to include an additional paragraph providing a reference to the compulsory procedures for the settlement of disputes, as contained in Part XV, Section 2 of UNCLOS. In the view of this delegation, this reference would be particularly justified in cases where “voluntary” procedures failed, due to no response to requests made by coastal States for any measure leading to the removal of wrecks. The delegation noted that such a reference existed in several multilateral agreements, including the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972. In those cases, the dispute settlement procedures contained in Part XV could apply irrespective of whether parties to these agreements were parties to UNCLOS or not, without affecting their general position in this regard.

70 Some delegations supported these views and agreed to consider the reinstatement of the reference to settlement of disputes, as contained in Part XV, Section 2 of UNCLOS, provided the proposal was duly submitted in written form. In this connection, the view was expressed that the inclusion of a clause providing for compulsory jurisdiction of judicial bodies was needed in order to ensure the settlement of disputes.

71 Some other delegations, however, were in favour of retaining the current text on the following grounds:

- no written proposal had been presented at this stage;
- the Committee had approved the text of this article at LEG 90;
- the proposal had already been considered and discarded by the Committee. It was not appropriate at this late stage to reopen discussions aimed at reconsidering decisions already taken by the Committee;
- reinstatement of the reference to Part XV would create an obstacle for States which were not party to UNCLOS;
- several delegations from States Parties to UNCLOS had made reservations regarding the settlement of disputes provisions contained in Part XV. Presumably the reinstatement of the reference to Part XV in the draft convention would lead to similar reservations being made in respect of the draft wreck removal convention, thus diluting the compulsory effect aimed at by the proposal under consideration; and
- there was no need for a new provision since the present text already contained a reference to “judicial settlement” as a way of settling disputes, which clearly included the possibility for States to submit disputes both to the ICJ and to ITLOS.

72 The representative of the observer delegation of CMI noted that UNCLOS was a public law treaty and, accordingly, the mechanism for settlement of disputes regulated in Part XV thereof applied to disputes among States. On the contrary, the prospective wreck removal convention was a private law convention aimed at enabling coastal States to be compensated by private persons for costs incurred in connection with the removal of wrecks. Consequently, judicial claims in this regard would be considered by domestic courts and not by the international

bodies referred to in Part XV of UNCLOS. For this reason, the incorporation of a reference to Part XV did not serve any practical purpose.

73 The proposing delegation replied that the term “judicial settlement” is simply a declaration of general intent, with no legal or political consequences; on the contrary, the additional paragraph ensures legal certainty as it makes the settlement of disputes mandatory, rather than leaving it to voluntary arrangements.

74 The Committee decided to maintain the current text and invited interested delegations to submit written proposals in this regard to LEG 92.

Draft article 17

75 In introducing this article, the lead delegation pointed out that the text was based on the Ballast Water Convention, but that the preambular clause that had been agreed in the recently adopted SUA Protocols might also be used for article 17. Suggested wording, based on the SUA Protocol preamble, was included in annex 3, page 9 to document LEG 91/3, as follows:

“Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982, or under the customary international law of the sea.”

76 One delegation suggested changing the word “or” to “and”, which would make the reference to UNCLOS and to customary international law identical to that used in the SUA Protocols.

77 Some delegations noted that, as they were not parties to UNCLOS, it would be difficult for them to agree to the article unless it also included a reference to customary international law. They therefore preferred the SUA formulation.

78 It was also suggested that it might be appropriate to refer not only to UNCLOS, but also to some other conventions in this article.

79 The view was expressed that the article was too restrictive, as it referred to UNCLOS only insofar as it reflected customary international law. Some delegations questioned the necessity of retaining the article.

80 One delegation noted that UNCLOS was not a constitutional document but only a treaty and, accordingly, the draft convention should not attempt to bind future generations to what is appropriate today but may not be appropriate in the future. However, this view was rejected by several other delegations, who noted that UNCLOS is widely regarded as providing the legal framework for seas and oceans and could not be ignored.

81 The majority of delegations were of the view that the draft article should be retained to avoid a possible conflict with other conventions. They also agreed that it was preferable to retain the reference to UNCLOS and to insert a reference to customary international law. In this regard, they accepted, in principle, the new wording contained in annex 3 to document LEG 91/3.

Proposal for new paragraph 2

82 The delegation of the United States introduced document LEG 91/3/1, in which it was proposed to add a new paragraph 2 to article 17, in order to make clear that the draft convention

does not legally confer any authority upon coastal States with respect to wrecks of States non-parties, or otherwise interfere with the rights and obligations, (including navigational rights and jurisdiction over flag States) of States non-parties, beyond that provided under customary international law as reflected in UNCLOS. The delegation also noted that it was appropriate to reflect this language in the text of the convention rather than in the preamble.

83 Some delegations were of the view that the provisions of article 2, paragraph 1 and article 10, paragraph 10 of the draft convention already provided the necessary safeguards for the flag State. These safeguards were embodied in the text of the convention, which was governed by the general principles of international law to the effect that a convention was only applicable to States Parties. It was further suggested that including a provision of this nature might even undermine this general principle.

84 The view was also expressed that it was inappropriate for a convention to regulate the rights of States which were not Parties to that convention.

85 Most delegations which spoke expressed their support, in principle, for the inclusion of the new paragraph but noted that, before reaching a final decision, they would need to see a written text.

86 It was suggested, additionally, that appropriate amendments needed to be introduced, particularly to the wording "exclusive jurisdiction" as this would not be consistent with the legal framework established in UNCLOS, in terms of which the flag State did not exercise exclusive jurisdiction in the EEZ.

87 Other delegations questioned the placement of this provision in article 17, as this article dealt with the relationship of the draft convention with other conventions and not with the rights of States non-Party to the convention; if kept in this article, the title would need revision.

88 Following these discussions, the delegation of the United States provided a revised wording for the consideration of the Committee, as contained in document LEG 91/WP.5. The new proposal reads as follows:

"1 Except as provided herein, nothing in this Convention shall prejudice the rights and obligations of States Parties under the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982, and under the customary international law of the sea.

2 Nothing in this Convention shall prejudice the rights and obligations of non-State Parties to this Convention, under the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982, and under the customary international law of the sea."

89 The delegation pointed out that some of the articles of the draft convention, for example article 13, paragraph 13, suggest that it could be applicable to States non-Parties to the convention. Additionally, the delegation was of the view that the draft convention should not result in an interpretation of flag and coastal State jurisdiction different from that provided in UNCLOS and customary international law. For these reasons, the delegation suggested that a second paragraph was necessary to clarify that the draft convention would not be applicable to States non-Parties.

90 The delegation pointed out that the phrase “except as provided herein” was included in paragraph 1 to clarify that the draft convention does change the rights and obligations of parties with respect to wrecks covered by it, but that the draft convention is not intended to alter rights and obligations under UNCLOS and customary international law of the sea in any other respect.

91 The delegation also pointed out that the wording suggested in annex 3 to document LEG 91/3 was not exactly same as that contained in the SUA Protocol.

92 One delegation noted that the wording “Except as provided herein” justified the inclusion of the second paragraph. However, this formulation would only be acceptable if there was an intention to amend UNCLOS, which was not the case. Therefore, it was view of this delegation that the two paragraphs should be amalgamated by deleting the words “except as provided herein” and adding the words “or States non-Parties” after the word “Parties”.

93 One delegation suggested not having article 17 at all.

94 Several delegations were opposed to the inclusion of paragraph 2 on the basis that:

- the second paragraph was unnecessary, since it was an established rule of international law that States would not be bound by the provisions of a treaty to which they were not a Party;
- there was no reason to include a paragraph relating to the rights of States non-Parties; and
- nothing in the draft convention violates the rights and obligations of the flag State established under customary international law and UNCLOS.

95 With respect to the proposed new wording to paragraph 1, the point was made that the phrase “except as provided herein” was confusing.

96 The majority of delegations that spoke reserved their position on the inclusion of paragraph 1 and noted that they would take it to their capitals for consideration and further discussion at the next session of the Committee. The Committee accordingly decided to keep this proposal as a footnote in the text for the consideration of the Committee at its next session.

97 One delegation noted that the French translation of document LEG 91/WP.5 did not reflect the fact that it had been agreed to substitute the word “and” for the word “or” in both paragraphs. This delegation therefore requested that the French version of the document be corrected.

Draft articles 18 to 22

98 The Committee noted that draft articles 18 to 22 contained no amendment proposals.

99 One delegation with reference to the first paragraph in draft article 22, noted that the final text of the draft convention was established in a single original in six languages, including the Arabic language, yet there was no translation into Arabic of the draft text. It requested that all working papers be provided in the Arabic language.

100 In reply, the Secretariat explained that the working languages of the Committee (and of the diplomatic conference) were English, French and Spanish. All documents were translated into those languages. Since the official languages of the Organization also include the Arabic, Chinese and Russian languages, there was also simultaneous interpretation from and into those languages. Once adopted, the text of the convention would be translated into the Arabic, Chinese and Russian languages, in accordance with the requirements of the Convention. Because of the financial implications involved, any proposal to change this practice should be submitted to the Council.

101 The Committee concluded its article-by-article examination of the draft convention.

Preamble and Entry-into-Force requirements

102 The Committee noted two working papers which had been prepared by the Secretariat for future reference, one containing a draft preamble (LEG 91/WP.1), and the other on entry-into-force requirements in IMO “legal” conventions (LEG 91/WP.2). It was agreed that the lead delegation would consider the draft preamble and would submit proposals on figures for the entry-into-force requirements, in consultation with interested delegations and the Secretariat.

Kenya Diplomatic Conference

103 The Secretariat reminded the Committee that, because of the refurbishment work, the IMO headquarters building would be closed for about 12 months from the end of July this year. It was recalled that the Committee had been working on the understanding that there would be a diplomatic conference from 14 to 18 May 2007, in Nairobi, Kenya, and, in this connection the Government of Kenya was thanked for its generous offer to host the diplomatic conference. The point was made that everything had to be organized well in advance, and to this end, it was imperative that the Committee take a decision now as to whether it would be ready to hold the diplomatic conference in the spring of 2007. It was also imperative that the Committee finalize its deliberations on the draft at its ninety-second session, in October 2006.

104 The Committee agreed that the text would be ready to be finalized at LEG 92 and considered for adoption at a diplomatic conference in the spring of 2007. The Chairman appealed to the Committee to limit discussion at LEG 92 to issues already on the table and to submit written proposals well in time.

105 The Committee requested the Secretariat, in consultation with the lead delegation and interested delegations, to edit and prepare a new version of the draft text for consideration at LEG 92.

106 The Committee agreed that, in view of the impending diplomatic conference and the proposed refurbishment of the IMO Headquarters, only one session of the Committee should be held, in the autumn of 2007.

D PROVISION OF FINANCIAL SECURITY (agenda item 4)

(i) Progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

107 In introducing document LEG 91/4, containing the report of the sixth session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for

Death, Personal Injury and Abandonment of Seafarers (19 to 21 September 2005), the Secretariat recalled that the Working Group had been established in 1999, under the provisions of the Agreement of Co-operation between IMO and ILO in order to ensure, through the operation of appropriate international instruments, the rights of seafarers when they are abandoned, often in foreign ports far from their countries of origin, by the owners or operators of ships on which they have been serving.

108 The Working Group's major achievement so far had been the development of two resolutions and related guidelines, one on Provision of financial security in case of abandonment of seafarers, the other on Shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, the aim of which is to provide seafarers and their families with a level of protection that has hitherto been lacking in respect of two fundamental areas of seafarer welfare. Both the resolutions and associated Guidelines took effect on 1 January 2002.

109 At its sixth session, the Working Group had considered a number of issues, including *inter alia*, whether the guidelines cover fishing vessels, the Joint Database on Abandonment of Seafarers developed by ILO, a suitable definition of "resolved case", a proposal for insurance coverage for abandonment and the need for a mandatory instrument.

110 The Working Group had decided that it should, in accordance with its revised terms of reference and subject to these being agreed by the Legal Committee, continue to examine all the issues of financial security for seafarers and their dependants with regard to compensation in cases of personal injury, death and abandonment, taking into account the relevant IMO and ILO instruments, including the new consolidated Maritime Labour Convention, 2006. It also decided that it should continue to monitor the implementation of the Guidelines adopted by the two resolutions.

111 The Working Group further decided that, although the Maritime Labour Convention, 2006 was likely to go some way towards providing a solution to many of the issues before the Group, the Group should, subject to agreement by the Legal Committee, consider the development of longer-term sustainable solutions to address the problem of financial security with regard to compensation in cases of death or personal injury and abandonment and make appropriate recommendations to the IMO Legal Committee and the ILO Governing Body. At present, no meeting of the Joint Working Group had been scheduled. The Joint Secretariat will be consulting the Chairman of the Group, Mr. Schindler (France) as to a suitable date and venue.

112 The representative of ILO informed the Committee that a number of resolutions of the 94th (Maritime) Session of the International Labour Conference deal with issues of common interest to the two Organizations. In particular, he noted that one of these resolutions encouraged the Joint Working Group to continue its work and recommended that both Organizations develop a standard accompanied by guidelines, which could be included in the Maritime Labour Convention, or another existing instrument.

113 He noted that the Database on Abandonment of Seafarers had been open to the public since 29 March 2006 on the ILO website, at the following URL: <http://www.ilo.org/dyn/seafarers/>. It contained salient information on instances of abandonment, for the purpose of monitoring the problem in a comprehensive and informative manner. The ILO representative called on Governments and Non-Governmental Organizations to report incidents of abandonment of seafarers.

114 Referring to paragraph 4 of the revised terms of reference contained in annex 1 of the report, one delegation suggested that this paragraph should stipulate whether the proposed longer term solution should assume the form of a mandatory instrument as well as other details, such as whether it would address States or contain contractual obligations, and where to include it. The delegation suggested that consideration be given to more widespread participation by States in the Working Group for example, by holding its meeting back to back with another IMO meeting. The delegation also questioned why the words “and abandonment” appeared in brackets.

115 The Secretariat noted that the revised terms of reference did not contain the word “mandatory”, since that would be a decision for the IMO Legal Committee and for the ILO Governing Body. However, the Group, in discussing this issue, had not come to a firm conclusion. The Group had also been divided on whether the subject of abandonment needed a longer-term solution. The Secretariat would explore the possibility of organizing the next session of the Working Group back-to-back with a session of the Legal Committee, in order to facilitate participation by interested States.

116 One delegation stated that abandonment and personal injury and death of seafarers were two subjects intimately related. As such they should not to be dissociated and should be dealt with in parallel. Accordingly, it suggested deletion of the square brackets around the words “and abandonment”. This suggestion was supported by another delegation.

117 It was decided to delete the square brackets around the words “and abandonment” in paragraph 4 of the revised terms of reference.

118 The Legal Committee took note of the report of the sixth session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, as contained in document LEG 91/4.

119 In particular, the Committee:

- authorized the Working Group to continue monitoring the problem of abandonment of crew members/seafarers, taking into account all relevant information including technical solutions available for financial security;
- authorized the Working Group to proceed with the development of longer-term sustainable solutions to address the problems of liability and compensation regarding claims for death, personal injury and abandonment of seafarers, bearing in mind the outcome of the 94th (Maritime) Session of the International Labour Conference; and
- approved the revised terms of reference, as amended.

120 The Committee thanked the Joint Working Group, and in particular its Chairman, for the excellent work produced.

(ii) Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974

(a) Athens Protocol – development of guidelines to implement resolution A.988(24)

121 The delegation of Norway, as leader of the Correspondence Group, introduced documents LEG 91/4/1, LEG 91/4/2 and LEG 91/4/3 by noting, as a matter of background, that the 2002 Athens Protocol had increased the limits of liability for passenger death and injury and had provided for compulsory insurance but did not include absolute exceptions for insurers from risks associated with acts of terrorism. This delegation recalled that the Committee, at its ninetieth session, had recommended that States could ratify the Protocol with a reservation concerning terrorism, and this recommendation was adopted by the IMO Assembly in resolution A.988(24). The Committee's next task was to develop guidelines for implementing this recommendation. Documents LEG 91/4/1, LEG 91/4/2 and LEG 91/4/3 were intended to provide a basis for discussion of possible guidelines. Additionally, as the result of informal consultations, document LEG 91/WP.3 had been prepared to highlight the points of principle that could form the basis for further drafting of such guidelines.

122 This delegation described in general the structure of the draft guidelines, as contained in the annex to document LEG 91/4/1. Paragraph 1.1 of the draft would reflect the recommendation in resolution A.988(24) regarding the use of a reservation to take into account market conditions. But the wide discretion provided to States through such a reservation would be constrained by the guidelines, which could be revised as necessary to take into account changes in the insurance market. Paragraph 2 of the draft addressed the current state of the insurance market and distinguished between standard non-war risk insurance, which was available through the P&I Clubs and was subject to specific exemptions including an exemption for terrorism, and war risk insurance which was not offered by the P&I Clubs but covered terrorism up to a limit, subject to certain conditions, including notice of cancellation.

123 With respect to the use of reservations, the draft guidelines, in paragraph 1.4, also included drafting options for the use of a reservation concerning exemption from liability of the shipowner, carrier and insurer for acts of terrorism, based on the principle that there should be protection against liability for uninsurable risks. One such risk would be an act of terrorism which was not determined to be wholly caused by a third party because the shipowner failed in some way to prevent the attack.

124 Document LEG 91/WP.3 set out a number of principles or conditions which could be used as the basis for development of guidelines and for ensuring that essential certificates would be issued by the insurance industry, including the need to resolve the issue of liability for acts of terrorism. The working paper suggested that a certain degree of liability for terrorism could be retained by a shipowner and insurer, if the limitation was based on the 1996 LLMC. Article 19 of the Athens Convention would provide a basis for applying such a limitation. This approach would nevertheless require the Committee to address the problems of direct action and of an insurer using policy defences, such as the failure of the shipowner to pay a premium. The working paper noted that there was one broker who was willing to offer direct action with almost no policy defences up to the limit of \$500 million (referred to as the "Marsh scheme"). Under this scheme, the shipowner would need to have two "blue cards" (that is, evidence of cover from insurers). This would provide passengers with more protection than was currently available.

125 The observer delegation of the P&I Clubs introduced document LEG 91/4/4 which it had submitted jointly with the observer delegation of the International Union of Marine Insurance (IUMI). This delegation said it would need time to study the proposals put forward in documents LEG 91/4/1, LEG 91/4/2 and LEG 91/4/3 and in LEG 91/WP.3. Although there appeared to be a willingness among the majority of Club boards to provide cover, their consideration had not been concluded and, in any event, they were unlikely to do so until the issue of terrorism had been satisfactorily settled. At the present point in time, this was not a done deal. Additionally, even if cover could be provided for existing passenger ships of up to 3,600 passengers, it should not be taken for granted that the industry would be able to provide cover for the larger passenger ships now coming into service. No final decision had yet been taken by the Clubs.

126 The observer delegation of the International Chamber of Shipping (ICS) introduced document LEG 91/4/5, which it had submitted jointly with the International Council of Cruise Lines (ICCL). This delegation said there was common ground on the need to protect passengers as far as possible, but there were difficulties in the current insurance market. One way to provide protection was to follow the recent example of viewing terrorist acts against persons as attacks on society in general with compensation being paid from public funds.

127 This observer delegation said that the Athens Protocol imposed strict liability on the shipowner in situations where it was not able to prove that damage was not wholly caused by a third person, and expressed a preference for option 4 in the draft guidelines in paragraph 1.4 of the annex to document LEG 91/4/1. That option would provide for the full exclusion of a carrier's liability and insurance requirements for terrorism-related incidents. Finally, this delegation said that any use of restrictions in cover for terrorism (such as notice of cancellation and geographical limits) should also involve protection of the shipowner from liability in the event such restrictions were in effect. Governments needed to accept that the insurability of terrorism was limited and that a shipowner's liability should not exceed the insurable limit, including any restrictions.

128 The observer delegation of ICCL said it was essential to maintain the linkage between liability and insurability. This delegation expressed the view that the introduction of strict liability coupled with compulsory insurance, with direct action, to cover liability in the Athens Protocol, implied such a linkage. There had been no intention to undermine the financial viability of carriers by having strict liability which could not be covered by insurance. It would be unfair to allow such a situation to develop in cases of terrorism, which were intended to redress grievances against Governments not against carriers. This delegation also said the Committee should be cautious about making any final decisions by relying on specific broker proposals such as the Marsh Scheme. Not only did this scheme involve a number of limitations, but another broker had not yet been so confident about offering insurance cover for terrorist acts.

129 The view was expressed that the Committee needed to listen to the industry and ensure that carriers were not placed in the position of being liable for risks for which there was no insurance cover. Any solution found must also ensure that a large number of States would become Party to the Athens Protocol, particularly States which had fleets of large passenger ships.

130 One delegation expressed support for a compromise that would adapt the carrier's liability under the Athens Protocol for terrorist incidents to insurability on the war risk market and which allowed the P&I Clubs to take up their role as providers of financial guarantees. This delegation said it was aware that the issue of terrorism risk in the context of the Athens Protocol was considered by some to be a matter of principle. Any eventual compromise should take into account the particular nature of the Athens Convention, which had passengers as its object.

Passengers deserved special protection because they incurred personal risks as private persons. This was not the case with other liability conventions, and in the view of this delegation, a possible compromise should take into account the specific context of the Athens Protocol and its scope must not be extended to other liability conventions. In those cases, the terrorism risk should be treated the same as war risk. A number of delegations supported this view.

131 One delegation welcomed the proposals for a compromise and expressed preference for an approach that allowed the shipowner to claim a limitation of liability under the 1996 LLMC Protocol, while not being relieved of all responsibility it might have to prevent terrorist acts. This delegation made reference to a national scheme which had been developed to encourage the insurance industry to provide insurance cover for liability related to compensation for innocent victims of terrorism up to 1 billion euros.

132 The Committee was urged by one delegation to look more closely at publicly-established schemes at national or supra-national level, and to search for models in addition to the Marsh Scheme which might be used to find a practical solution for the Athens Protocol.

133 The view was also expressed that the industry would find a way to provide cover if the Athens Protocol came into force with the full application of its provisions, but Governments were willing to work with the industry to accommodate their concerns in advance, if possible.

134 While it was noted that the solution may involve many layers with different mechanisms for non-war risks and war risks, the view was expressed that shipowners would prefer to have all insurance cover from a single source (P&I Clubs). It was further noted that finding a solution for the Athens Protocol was a unique exercise and would not, as such, necessarily serve as a model for other conventions.

135 Some delegations said that it would be inappropriate to exclude liability for acts of terrorism. This would not only place passengers in an unfavourable position, but presumably carriers would not want to deny passengers any compensation in the event of such an act. This was so particularly if the exemption were absolute and extended to cases where there might be contributory negligence or fault on the part of the carrier, since carriers had a duty to provide for security on ships.

136 Some delegations said they could not support the use of a reservation to exclude shipowners, carriers and insurers from liability for acts of terrorism beyond what was provided under article 3, paragraph 1 of the Athens Protocol. The view was expressed that this use of a reservation would go too far and would not be consistent with the object and purpose of the Protocol. It was also noted that there was no agreed definition for terrorism and this concept could be interpreted differently in different jurisdictions. It was further noted that a reservation which was inconsistent with substantive provisions of the Protocol could raise constitutional problems when the concept was submitted to parliaments.

137 With further regard to constitutional problems, the question was raised about the impact the proposed solution would have on the original 1974 Athens Convention.

138 Support was expressed for the use of the 1996 LLMC Protocol limitation under article 19 of the Athens Protocol, provided the 1996 LLMC was not applied directly, but only used for determining the amount of the total limitation under the Athens Protocol. It was explained that the proposal in document LEG 91/WP.3 would leave in place the 250,000 SDR limit per passenger, but would impose a total limit of liability per incident calculated on the basis

of 1996 LLMC (175,000 SDR times the number of passengers). This was considered to be a compromise which would be better than leaving in place the current 1974 Athens limits.

139 It was noted that the bulk of the risks under the Athens Protocol were non-war risks unrelated to terrorism.

140 The delegation of Norway, as leader of the Correspondence Group, urged the Committee to agree at this session on the need for guidelines based on the principles set out in document LEG 91/WP.3, and to agree on whether or not there should be an exemption for terrorism related liability. This delegation expressed the view that the Marsh Scheme, while imperfect, offered a practical option for handling the required insurance cover for the terrorism risks. In any case, if the Committee did not find a solution, then a decision on how to proceed might be taken outside the Organization. This delegation said there was growing political pressure to find a solution. The need for increased protection for passengers went back to the **Scandinavian Star** tragedy in 1990, and it was now becoming urgent to bring the Athens Protocol into force. One option would be to bring the Protocol into force without any reservations as to the insurance requirements, the other option would be to bring the Protocol into force based on guidelines allowing for reservations.

141 Several delegations noted their appreciation for the efforts made by the lead delegation to find a way forward but said they needed more time to consider these proposals, in particular that contained in document LEG 91/WP.3.

142 One delegation expressed the view that the Committee might need to rethink the issue of exclusions of the carrier's liability for acts of terrorism in connection with the duty of States to safeguard the security of their citizens, combined with a global solution for providing compensation, which might eventually involve an amendment to the Protocol. The solution must be sustainable and achieve the goal of protecting passengers, including from terrorist acts.

143 The Committee agreed that work on the development of the guidelines should continue intersessionally along the lines suggested in documents LEG 91/4/1 and LEG 91/WP.3 and within the framework of resolution A.988(24). The majority of the Committee was not, however, in favour of pursuing an option which would exclude shipowners from liability for acts of terrorism. The Committee agreed further that the solution should be as simple as possible. It noted that, while it might not be possible to find a solution that was perfect, the solution needed to be widely acceptable. The Chairman noted that there may be a constitutional issue in paragraph 1.5 of the draft guidelines on page 5 of the annex to document LEG 91/4/1, concerning the requirement to have identical reservations in order for the Protocol to be in force between States Parties.

(b) Bareboat chartered vessels

144 In introducing document LEG 91/4/6, the observer delegation of CMI recalled that document LEG 89/6, submitted by CMI to the Committee's eighty-ninth session, had contained a suggestion to amend the definition of "owner" and "registered owner" in the conventions in which compulsory insurance is a requirement, so as to embrace bareboat charterers. Further research had shown, as reflected in document LEG 91/4/6, that any such extensions in the 1992 CLC and FUND Convention, the 1996 HNS Convention and the draft wreck removal convention, would not be advisable, as they might create unforeseen problems in those conventions where there is channelling of liability.

145 The Legal Committee took note of the content of document LEG 91/4/6, and expressed its appreciation and gratitude to the CMI for studying this issue.

E FAIR TREATMENT OF SEAFARERS: PROGRESS REPORT ON THE WORK OF THE JOINT IMO/ILO *AD HOC* EXPERT WORKING GROUP ON FAIR TREATMENT OF SEAFARERS (agenda item 5)

146 The Committee continued with the consideration of this agenda item.

147 The IMO Secretariat introduced documents LEG 91/5 and LEG 91/5/1, containing the draft guidelines and the draft report on the work of the second session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers (the Working Group). The Secretariat reported that the Working Group had adopted a draft resolution containing, at annex, draft guidelines on fair treatment of seafarers in the event of a maritime accident, for submission to the Legal Committee for its approval and formal promulgation, and, in due course, approval and promulgation by the ILO Governing Body. The Committee was also invited to approve the continuation of the Working Group, under new terms of reference, in the event it becomes necessary for it to reconvene.

148 In the absence of the Chairperson of the Working Group, Ambassador Fernández of Panama, the Secretariat also introduced the report of the second session of the Group on her behalf. The Secretariat highlighted some of the key issues in the guidelines such as paragraphs 1, 2 and 4 of the introduction, as well as some of the paragraphs in the resolution. It also noted that the Working Group invited the Legal Committee to:

- adopt the draft resolution and accompanying guidelines;
- approve the draft revised terms of reference (in annex 5 to the report) for the continuation of the Joint Working Group, to be reconvened as necessary; and
- instruct the Committee to bring the adopted guidelines to the attention of the MSC/FSI, as the body undertaking a review of the Code for the investigation of marine casualties and incidents, in line with the decision of the Council, taken at its eighty-ninth session.

149 The representative of the International Labour Organization (ILO) reported that the draft resolution attaching the guidelines, as drafted and approved by the Working Group, would be submitted to the ILO Governing body for adoption at its next session in June 2006. Any changes made by the Legal Committee to the text of these guidelines would also be presented to the ILO Governing Body, which may or may not approve them.

150 The Committee expressed its thanks and appreciation to the Chairperson and all members and observers of the Working Group for the successful completion of the difficult task of producing the set of guidelines in a short period of time. It also extended its thanks to ILO for its co-operation with IMO in the preparation of the guidelines.

151 The delegation of the United States introduced documents LEG 91/5/2 and LEG 91/WP.4. After commending the significant effort made by the Joint Group in producing the draft guidelines, the delegation referred to the comprehensive proposals it had presented for the consideration of the Working Group. These were intended to ensure that the guidelines kept casualty investigations effective, so as to ensure both the preservation of a safe working

environment on board ships through the performance of accident investigations which aimed primarily at saving the lives of seafarers. It was therefore extremely important that seafarers were protected and that they understood their rights during these investigations. To achieve these goals, a widespread adoption and implementation of the guidelines should be ensured. In this regard the delegation referred to the need to address concerns that would prevent its country, and presumably others, from adopting the guidelines as presently drafted.

152 The delegation explained that its submission aimed at removing those obstacles by addressing the following three main issues. Firstly, there should be a clear statement that the guidelines were not intended to apply following incidents committed with criminal intent, as previously decided by the Committee at its eighty-ninth session. Secondly, the definition of “maritime accident” might be susceptible to misinterpretation and confusion, as it lacked an expected reference to actual or potential damage or injury. Finally, the guidelines should be interpreted and applied in conformity with a State’s domestic law. Although there was language in the introduction that prevented the guidelines from interfering with domestic law, the text might not be interpreted in conformity with this law.

153 In submitting its proposals to address these concerns, the delegation expressed its hope that they would be accepted so that the guidelines could provide the flexibility necessary for States to adopt and implement them. The delegation also expressed its preference that this could be done during LEG 91, so that implementation of the guidelines would not be delayed.

154 Several delegations shared some of these concerns and noted that, on account of their importance, the guidelines should be scrutinized by a body such as the Legal Committee, so as to ensure that the Governments responsible for their implementation were more widely represented than they had been at the Working Group.

155 Several delegations which spoke noted other concerns, including:

- while the guidelines (at paragraph 4) proclaimed that they did not seek to interfere with national legislation, nevertheless, operative paragraph 4 of the draft resolution invited States, where appropriate, to consider amending their national legislation to give full and complete effect to the guidelines. This task seemed unrealistic if, as envisaged, the guidelines would take effect as from 1 July 2006;
- the right to avoid self-incrimination (subparagraph 13.2) should be addressed, bearing in mind the existence of two types of investigation, respectively aiming at clearly establishing the circumstances of a maritime casualty and at ascertaining criminal responsibility for its occurrence. In many jurisdictions, the right to remain silent would not apply to the first type of investigation, since silence could impede investigation of the incident. In these jurisdictions, however, the information gathered is required by legislation to be used only for the purposes of the investigation and not for criminal prosecutions;
- subparagraph 9.5 includes wages among other provisions for subsistence, such as accommodation, food and medical care, required to be provided to detained seafarers. It should be clarified that the obligation to pay wages rests ultimately upon the shipowner/employer and not upon States;

- paragraph 7 excludes the application of the guidelines to warships or naval vessels only, without making reference to vessels operated by States for non-commercial purposes; and
- subparagraph 9.21 proclaims the principle of exclusive flag State jurisdiction in matters of collision or other incidents, and in so doing ignores the jurisdictional rights of other States established by international treaties.

156 Many delegations, although sharing some or all of the concerns referred to above, noted the overriding need to adopt the guidelines at this session and to postpone a review of the guidelines to a later stage. The following explanations were given in support of this opinion:

- it is imperative to finalize and promulgate these guidelines as soon as possible in order to show the international maritime community that IMO and ILO are serious in their resolve to provide for the fair treatment of seafarers in the event of a maritime accident;
- the adoption and promulgation of guidelines on the fair treatment of seafarers is long overdue; the Organization should not wait for another incident in which innocent and unsuspecting seafarers would be criminalized and arbitrarily detained before it finalizes and promulgates these guidelines;
- by resolution A.987(24) the IMO Assembly had agreed to adopt the guidelines as a matter of priority. To this end it had, furthermore, requested the Joint IMO/ILO Group to finalize its work expeditiously; and authorized the IMO Legal Committee and the ILO Governing Body to promulgate the guidelines, once finalized, without waiting for adoption by the governing bodies;
- reconsideration and modification of the text agreed by the Working Group would impede promulgation by the ILO Governing Body in June and delay the adoption and implementation until next year at the earliest;
- such a delay would send a wrong message to the international maritime community and especially to seafarers as to the meaning of the priority treatment requested by resolution A.987(24);
- the guidelines might not be a perfect text but were the best possible result, given especially the constraints of time and the need for urgent action;
- there were no square brackets in the text, thereby indicating a high degree of consensus;
- the present text of the guidelines reflected a compromise resulting from reciprocal concessions made during the deliberations of the Working Group;
- the proposals in document LEG 91/WP.4 had all been extensively discussed in the Working Group;
- since the guidelines were recommendatory in nature, States were not under any legal obligation to implement them in their entirety as from the date of their entry into force on 1 July 2006;

- the concerns of States regarding implementation would be addressed in due course, in accordance with the request that the guidelines be kept under review, explicitly reflected in both resolution A.987(24) and the draft resolution on adoption of the guidelines put forward for the consideration of the Committee;
- the adoption of the guidelines at this session, together with the request that they be kept under review was in line with precedents on adoption of IMO instruments; and
- in the case of these guidelines, the urgency regarding adoption and implementation reflected the will and determination of all Member States to take steps to protect seafarers detained in the aftermath of maritime accidents.

157 The observer delegation of the International Shipping Federation (ISF) referred to the significant concessions made by its social partners in order to achieve a consensus on the guidelines with all the participating Governments. In its view, the guidelines were a balanced document, and an excellent example of best practice which would represent a clear statement from both IMO and ILO that the world expects seafarers to be treated fairly. The delegation also expressed its agreement to keep the guidelines under review and to work with all Governments in this task.

158 The observer delegation of the International Federation of Shipmasters' Associations (IFSMA), while endorsing the need to adopt the guidelines at this session of the Committee, noted that the guidelines fell short of the practical code IFSMA would like to see as a mandatory instrument. Seamen, especially shipmasters, did need special protection that only an internationally binding code of conduct could give them. The guidelines should be adopted, given the time and effort invested to bring the issue of unfair treatment into the public domain. While the Working Group might remain in existence to monitor progress of the guidelines, only at IMO could States analyse and think through the problems associated with fair treatment of seafarers in relation to maritime accidents. This observer delegation expressed its view that in the not-too-distant future, the guidelines should form the basis of a binding IMO instrument.

159 The observer delegation of the International Confederation of Free Trade Unions (ICFTU) noted the need for special protection of seafarers and the urgency of ensuring their fair treatment. It compared this urgency with that which had existed on the occasion of the adoption of the ISPS Code. That significant instrument had been hastily drafted and details such as training or shore leave were only being addressed today. In a similar way, the guidelines would be subject to continued review and fine-tuning to meet the concerns of all States. The delegation referred to the need to adopt the guidelines at this session, in conformity with the objectives of resolution A.987(24).

160 One delegation expressed the view that, inasmuch as the guidelines were a joint output by IMO and ILO, the work of reviewing them should be undertaken through the mechanism already agreed-upon by both IMO and ILO, namely the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers. The observer delegation of IFSMA objected to this proposal.

161 Bearing in mind these points, the Legal Committee:

- agreed to adopt, at this session, the draft resolution and guidelines on fair treatment of seafarers in the event of a maritime accident (attached at annex 2 to this report);
- decided to establish, at its next session, an *ad hoc* working group to be tasked with reviewing the guidelines taking into account the comments made by the delegations which had expressed concerns at this session and any others that may be submitted intersessionally;
- agreed that any decisions to amend the guidelines the Committee might be able to make on the recommendations of the proposed working group would be transmitted to the ILO Governing Body for its consideration and approval in November of this year; and
- instructed the Secretariat to bring the adopted guidelines to the attention of the bodies undertaking a review of the Code for the investigation of marine casualties and incidents, in line with the decision of the Council taken at its eighty-ninth session.

162 The Committee decided to postpone to its next session the consideration of the draft revised terms of reference for the continuation of the Joint Working Group.

F PLACES OF REFUGE (agenda item 6)

163 The observer delegation of the CMI introduced document LEG 91/6 reporting on work underway by the International Working Group of the CMI on the preparation of a draft instrument which would create a rebuttable presumption that (i) a ship in distress had a right of access to a place of refuge, and (ii) a coastal State which granted access to a place of refuge should have immunity from suit.

164 The representative of the International Association of Ports and Harbors (IAPH) stressed that the subject of Places of Refuge was of great importance and expressed appreciation to the CMI for its work on this issue. He further suggested that the Guidelines on places of refuge adopted by resolution A.949(23) might be reviewed and amended in the light of the work done by the CMI.

165 Several delegations restated the view that there was no need at present to draft a convention dedicated to places of refuge; and that the more urgent priority would be to implement all the existing IMO liability and compensation conventions. The view was also expressed that existing liability and compensation regimes already adequately covered places of refuge and that the subject should be removed from the Committee's agenda. Some delegations, however, expressed the view that the subject should be retained on the Committee's agenda, in view of the importance of the subject matter.

166 The Committee agreed to revisit this issue at its ninety-second session in October when it would be considering its planned outputs for the next biennium.

G MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION (agenda item 7)

167 In introducing document LEG 91/7, the Secretariat informed the Committee that there had been no change in the status of the Convention since the last session. The Secretariat recalled that, as requested by the Committee at its last session, the Secretary-General had written to the eight Contracting States to the HNS Convention (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga), drawing their attention to the obligation, under article 43 of the Convention, to report on contributing cargo at the time of ratification or accession and annually thereafter. No responses had yet been received by the Secretariat.

168 The Secretariat noted that the main issue for the Committee to address at this session concerned the interpretation of article 1.5(a)(ii) of the HNS Convention. In this connection, the Director of the 1992 IOPC Fund, who has responsibility for carrying out the administrative tasks necessary for setting up the HNS Fund, at the request of the 1992 IOPC Fund Assembly, had brought to the attention of the Secretary-General the Assembly's concern that the entry into force of the revised Annex II to MARPOL 73/78, on 1 January 2007, would render meaningless the reference in article 1.5(a)(ii) of the HNS Convention to "noxious liquid substances carried in bulk" referred to in Appendix II of Annex II to MARPOL 73/78, as amended, since as from that date, Appendix II, as such, would cease to exist.

169 Following due consideration, the Secretary-General, as an interim measure and pending consideration of this issue by this Committee and the Marine Environment Protection Committee (MEPC) at its fifty-fifth session in October this year, issued Circular letter No.2699, the text of which was attached at annex 1 of the document under consideration, expressing the understanding that, if, as expected, revised Annex II to MARPOL 73/78 enters into force on 1 January 2007, the reference to "noxious liquid substances carried in bulk" in article 1.5(a)(ii) of the HNS Convention will, as from that date, refer to noxious liquid substances as defined in regulation 1.10 of the revised Annex II of MARPOL 73/78, which are carried in bulk.

170 The Circular letter also invited consideration of the adoption of a resolution on this issue. Accordingly the Committee was invited to consider a draft resolution addressing this issue contained in annex 3 of the document under consideration.

171 At the invitation by the Chairman, the Director of the Marine Environment Protection Division confirmed that, should the 2004 amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (revised Annex II to MARPOL 73/78), which were adopted at the fifty-second session of the Marine Environment Protection Committee on 15 October 2004, by resolution MEPC.118(52), enter into force, as from 1 January 2007, the revised Annex II to MARPOL 73/78 will no longer contain Appendix II; nonetheless, "noxious liquid substances carried in bulk" will remain covered by regulation 1.10 of revised Annex II.

172 Several delegations expressed gratitude for the Secretary-General's initiatives. All supported the adoption of the draft resolution. In so doing, they noted their concurrence that, although Appendix II would cease to exist, the "noxious liquid substances carried in bulk" referred to in article 1.5(a)(ii) of the HNS Convention, would remain covered by regulation 1.10 of revised Annex II. The change was merely a technical one and the resolution recognizes this fact.

173 One delegation expressed the view that the resolution was acceptable as an interim measure, but that it might be advisable to amend the HNS Convention once it entered into force.

174 Some delegations expressed concern about the lack of response to the Secretary-General's reminder letter and stressed, once again, the necessity to report expeditiously on receipt of contributing cargo, given the relevance of such reports for the entry into force of the Convention. It was noted, in this connection, that two of the contracting States met the tonnage requirement.

175 The delegation of Denmark informed the Committee that the Danish Parliament had adopted primary legislation for the implementation of the HNS Convention and that secondary legislation was being drafted.

176 The delegation of Spain reported that, in spite of some constitutional difficulties, due to the radical amendments to Annex II to MARPOL 73/78, it was proceeding with the drafting of legislation in view of ratifying the HNS Convention. He supported the draft resolution and expressed the hope that the MEPC, at its fifty-fifth session, would adopt a resolution in similar or identical terms.

177 The Committee unanimously adopted the draft resolution as contained in annex 2 of the document LEG 91/7.

H MATTERS ARISING FROM THE NINETY-FOURTH SESSION OF THE COUNCIL, THE TWENTY-THIRD EXTRAORDINARY SESSION OF THE COUNCIL AND THE TWENTY-FOURTH REGULAR SESSION OF THE ASSEMBLY (agenda item 8)

178 The Committee noted the information contained in document LEG 91/8 on matters relevant to the Committee arising from the ninety-fourth regular and the twenty-third extraordinary session of the Council, as well as the twenty-fourth regular session of the Assembly. With respect to the items on the revision of the draft wreck removal convention, legal issues arising out of the 2002 Athens Protocol and fair treatment of seafarers, it further noted that these had been considered under agenda items 3, 4 and 5 respectively, of its agenda.

179 The Committee also agreed that the diplomatic conference to consider the draft wreck removal convention would be held in Kenya from 14 to 18 May 2007. In view of this fact, and also bearing in mind the constraints to holding meetings during the period of refurbishment of the IMO Headquarters building, the Committee agreed, for the biennium 2006-2007 to have three, rather than four, sessions i.e., two in 2006, and one in October 2007.

I TECHNICAL CO-OPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION (agenda item 9)

180 The Director of the Technical Co-operation Division provided the Committee with an overview of the current TC programme. He noted that document LEG 91/9 stated there were no activities on maritime legislation delivered in the Asia – Pacific region during 2005. However, activities were planned for Papua New Guinea, the Philippines, Bangladesh, Cambodia and Pakistan in 2006-2007. In particular, a workshop would take place in the Philippines in September 2006 on the topic of the implementation of the SUA Protocols. He suggested that this workshop could also be replicated in other countries. He also suggested that the Committee may wish to consider that, in future, instead of reporting on a semi-annual basis on the TC programme

related to the maritime legislation, the Technical Co-operation Division may report to the Legal Committee on the biennium programme.

181 The Committee noted the information contained in document LEG 91/9 submitted by the Secretariat, as well as the information provided by the Director of the Technical Co-operation Division.

J BIENNIUM ACTIVITIES WITHIN THE CONTEXT OF THE ORGANIZATION'S STRATEGIC PLAN (agenda item 10)

182 The Secretariat introduced document LEG 91/10 inviting the Committee to recall that the Assembly, at its twenty-fourth regular session, adopted resolution A.970(24) on the Strategic Plan for the Organization (for the six year period 2006 to 2011) and resolution A.971(24) on the High-Level Action Plan of the Organization and Priorities for the 2006-2007 Biennium, the latter having been developed with input from all the IMO Committees, both on the high-level actions related to the strategic directions in the Organization's Strategic Plan and on the consequent planned output of the Committees during the current biennium.

183 It was explained that the plans were hierarchical. The top level was broad and provided the "Strategic Directions" (as found in the left column in Part 1 of the annex to document LEG 91/10). This level permitted the Organization to address the challenges and trends in the maritime sector. To achieve these strategic objectives, certain activities had to be carried out and these were at the middle level and were identified as "High-Level Actions" (as found in the right column in Part 1 of the annex to document LEG 91/10). The end results of those High-Level Actions were at the third level and were described as "Planned output of the Committees – 2006-2007" (as found in Part 2 of the annex to document LEG 91/10). One example of how the Legal Committee's work was reflected in the plan was the reference to preparation of the draft wreck removal convention in relation to High-Level Action numbered 1.1.1 in Part 2 of the annex to document LEG 91/10. All Committees were now expected to develop and monitor their work programmes by reference to these three levels and to the performance indicators, as foreseen in the Organization's strategic plan.

184 As requested by the Council, the Committee agreed:

- .1 to use the following five factors in prioritizing its work during the current biennium (document LEG 91/10, paragraph 2):
 - (i) more effort needs to be put into both implementation and maintenance of standards by all stakeholders in the chain of responsibility;
 - (ii) even more weight should be given by the Organization to the strategic objective of increasing emphasis on the human element across the chain of responsibility;
 - (iii) the Organization's efforts to reduce piracy and armed robbery need to be further enhanced;
 - (iv) more should be done by the Organization with other stakeholders to enhance the image of shipping and, at the same time, more needs to be done to reduce those factors which negatively impact the record of shipping in the eyes of civil society; and

- (v) more effort needs to be directed by the Committees towards identifying high-level actions and related outputs in order to address the strategic directions on enhancing the quality of shipping and environmental consciousness;
- .2 to set aside sufficient time at its future sessions for consideration of the high-level actions and their associated priorities, in order to ensure that they both accurately and concisely describe its planned activities (LEG 91/10, paragraph 5);
- .3 to ensure that its high-level action plan and related outputs, especially those involving amendments to existing conventions, particularly those which have been in force for a short period, would take fully into account the directives in resolution A.500(XII), and that due attention would be given to the requirement that a well-documented compelling need must be demonstrated for the development and adoption of new or revised standards (document LEG 91/10, paragraph 6);
- .4 when reporting on its work to the Assembly at its twenty-fifth regular session, to report progress toward fulfilling the Organization's aims and objectives using the framework of the high-level actions and planned biennial outputs (document LEG 91/10, paragraph 7(i)). In this regard, the Committee noted that the planned outputs described in Part 2 of the annex to document LEG 91/10, did not necessarily involve outputs attributable exclusively to the Legal Committee. The Secretariat was, accordingly, asked to identify or highlight those which were relevant to the work of the Committee so that the Committee could review them at its next session in light of its priorities for the 2006-2007 biennium;
- .5 when considering proposals for new work programme items, to ensure that the issues to be addressed are those which fall within the scope of the Strategic Plan (document LEG 91/10, paragraph 7(ii));
- .6 to review its guidelines for the organization and method of its work and, as appropriate, that of its subsidiary bodies, in order to require that submissions for new work programme items include an indication of how they relate to the scope of the Strategic Plan (document LEG 91/10, paragraph 7(iii)). In this regard, the Committee requested the Secretariat to produce amended Guidelines on Work Methods and Organization of Work, taking into account resolutions A.970(24) and A.971(24) for consideration by the Committee at its next session; and
- .7 when making recommendations for its work programme during the Strategic Plan period, to bear in mind the desirability of not scheduling more than one diplomatic conference in each year, save in exceptional circumstances (document LEG 91/10, paragraph 7(iv)).

185 The Committee noted that the Council was scheduled to receive plans for the 2008-2009 biennium from all the Committees at its ninety-eighth session in June 2007. Therefore the Committee would consider its planned outputs for the 2008-2009 biennium at its ninety-second session in October 2006.

K ANY OTHER BUSINESS (agenda item 11)**(a) Abandonment of ships**

186 The Secretariat introduced document LEG 91/11 informing the Committee about a decision adopted by the Basel Convention related to the abandonment of ships on land and in ports. The conference of the Parties to the Basel Convention was concerned about the effects that such abandonment might have on human health and environment and invited the parties to provide information on the issue to the Secretariat of the Basel Convention. In this respect the IMO Secretariat prepared document ILO/IMO/BC WG 1/2/2, attached at annex to document LEG 91/11, providing information on the provisions of various IMO legal instruments and guidelines related to the abandonment of ships.

187 The Secretariat noted further that the MEPC had considered the issue of abandonment of ships on land and in ports, at its fifty-third session, and had expressed concern that this matter had not been adequately covered by a binding legal instrument. The MEPC, therefore, had invited the Legal Committee to consider this issue based on the analysis provided in the document attached at annex to document LEG 91/11, with a view to assisting in the development of an effective solution.

188 One delegation noted that 1996 Protocol to the London Convention, 1972 had already entered into force.

189 The Committee confirmed the accuracy of the information contained in document ILO/IMO/BC WG 1/2/2 attached at annex to document LEG 91/11, noting, however, that the document should be amended to reflect the fact that the 1996 Protocol to the London Convention, 1972 had now entered into force.

(b) Outcome of the 94th (Maritime) Session of the International Labour Conference (Geneva, 7 to 23 February 2006). Adoption of the Maritime Labour Convention, 2006

190 In introducing document LEG 91/11/1, the representative of the International Labour Organization (ILO) stated that the adoption, by virtual unanimity, of the Maritime Labour Convention, 2006, by the 94th International Labour Conference, at its tenth Maritime Session, on 23 February 2006, marked the success of extensive preparatory work.

191 He noted that the Secretary-General, Mr. Mitropoulos, had been a Special Guest at the Conference at the invitation of the ILO Director-General and that the Conference had adopted a number of resolutions, some of which were of importance to IMO.

192 He recalled that the new treaty consolidates and updates 68 existing ILO maritime Conventions and Recommendations, the first of which was adopted in 1920. ILO Members that do not ratify the new Convention will remain bound by the previous Conventions that they have ratified, although those instruments will be closed to further ratification when the new Convention enters into force.

193 The Convention, which will become the “fourth pillar” of the international regulatory regime alongside the SOLAS, STCW and MARPOL Conventions, codifies an agreement between shipowners, seafarers and Governments on all of the elements necessary to achieve “decent work” for seafarers and to help ensure a level playing field for shipowners. It combines rights and principles with specific standards and provides guidance as to how to implement these

standards. Most importantly, it introduces a system under which flag States, or recognized organizations, will certify that the seafarers' working conditions on the ships concerned meet the "decent work" requirements of the Convention. The Certificate will be complemented by a "Declaration of Maritime Labour Compliance", issued partly under the responsibility of the flag State and partly under that of the shipowner concerned. The Certificate and the Declaration must be both issued to, and carried on board, all ships over 500 gross tonnage engaged in international voyages.

194 The Maritime Labour Convention, 2006 also establishes a comprehensive enforcement and compliance system, based on co-operation among all ratifying States and well-established arrangements under the regional "memoranda of understanding on port State control".

195 The Convention includes, *inter alia*, an accelerated amendment procedure to allow for updating of the technical provisions; onboard and onshore complaint procedures to encourage rapid resolution of problems; as well as provisions ensuring that, should a flag State delegate certain inspection and enforcement functions to a recognized organization, the organization will have to meet certain specific criteria.

196 The Legal Committee took note of the content of document LEG 91/11/1, and congratulated the ILO for the successful adoption of the Maritime Labour Convention, 2006.

(c) Criminal offences committed on foreign-flagged ships

197 The representative of the CMI introduced document LEG 91/11/2 reporting on the CMI work on drafting a Model National Law on Maritime Criminal Acts, following an incident in which a Japanese officer was killed on board a Panamanian-flag vessel, **Tajima**, on the high seas. In its work, the CMI was taking into account not only the problem of criminal offences committed on board foreign-flagged vessels, but also the ISPS Code, the 2005 Protocols to the SUA Convention and updated guidelines developed by the Maritime Safety Committee relating to piracy and other criminal acts.

198 Some delegations stressed the importance of the CMI work on this question. One delegation suggested that the work of the CMI should also take into consideration the problem of criminal offences committed on board non-foreign-flagged vessels. According to this delegation, the different cultural backgrounds of the crew may result in an increased risk of criminal acts on board vessels.

199 The Committee took note of the information contained in document LEG 91/11/2 and encouraged the CMI to continue its work on this subject matter and to report to the Committee at its next session.

STATEMENT BY THE REPUBLIC OF KOREA

The Republic of Korea drew the attention of the Committee to a recent incident in waters off the eastern coast of Somalia where a Korean fishing vessel had been hijacked together with its 25 crew members from Korea, Indonesia, Vietnam and China. The delegation asked the Committee to recall resolution A.979(24) adopted at the twenty-fourth regular session of the Assembly, concerning piracy and armed robbery against ships in waters off the coast of Somalia. The delegation requested the Committee to take whatever steps it could to suppress acts of piracy and maritime violence.

The delegation thanked the Secretary-General for his efforts to seek a rapid and safe release of the crew.

The Committee took note of this statement and, in so doing, expressed its sympathy for the victims of the hijacking.

The Secretary-General informed the Committee of the action already taken by the Organization in relation to the situation off the coast of Somalia. In this connection, he referred to resolution A.979(24), on Piracy and armed robbery against ships in waters off the coast of Somalia, which had been adopted unanimously by the last Assembly. A copy of the resolution was submitted to the Secretary-General of the United Nations for appropriate action, and was passed by him to the Security Council, which decided to issue a Presidential Statement regarding the matter. The Statement reads as follows:

“The Security Council takes note of resolution A.979(24) adopted on 23 November 2005 at the twenty-fourth session of the International Maritime Organization biennial Assembly, concerning the increasing incidents of piracy and armed robbery against ships in waters off the coast of Somalia. The Council encourages Member States whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia to be vigilant to any incidents of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law. In this regard, the Council welcomes the communiqué of the IGAD Council of Ministers’ meeting in Jawhar on 29 November 2005, which decided to coordinate its strategies and action plans to face this common challenge in close collaboration with the international community. The Council further urges cooperation among all States, particularly regional States, and active prosecution of piracy offences.”

The Secretary-General expressed the hope that, acting in a uniform and co-ordinated manner, the maritime community and, in particular, UN Members whose naval vessels and military aircraft operate in the Western Indian Ocean waters adjacent to the coast of Somalia, would succeed in eliminating acts of piracy and armed robbery against maritime shipping.

ANNEX 1

AGENDA FOR THE NINETY-FIRST SESSION

- Opening of the session
- 1 Adoption of the agenda
 - 2 Report of the Secretary-General on credentials
 - 3 Draft convention on wreck removal
 - 4 Provision of financial security:
 - (i) progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers; and
 - (ii) follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974
 - 5 Fair treatment of seafarers: progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers
 - 6 Places of refuge
 - 7 Monitoring the implementation of the HNS Convention
 - 8 Matters arising from the ninety-fourth regular and twenty-third extraordinary sessions of the Council and the twenty-fourth regular session of the Assembly
 - 9 Technical co-operation activities related to maritime legislation
 - 10 Biennium activities within the context of the Organization's Strategic Plan
 - 11 Any other business
 - Proposed CMI study on the implementation of procedural rules in limitation conventions
 - 12 Report of the Committee

ANNEX 2

Resolution and guidelines on fair treatment of seafarers
in the event of a maritime accident as prepared by
the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers

**Resolution LEG.3(91)
adopted on 27 April 2006**

**ADOPTION OF GUIDELINES ON FAIR TREATMENT OF SEAFARERS
IN THE EVENT OF A MARITIME ACCIDENT**

THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION
AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR ORGANIZATION,

RECALLING resolution A.987(24) approved by the Assembly of IMO at its twenty-fourth regular session and the ILO Governing Body at its 292nd session, by which the IMO Assembly and the ILO Governing Body, *inter alia*, agreed to the adoption of Guidelines on fair treatment of seafarers in the event of a maritime accident as a matter of priority and authorized the IMO Legal Committee and the ILO Governing Body to promulgate the said guidelines once finalized, by appropriate means;

HAVING considered the Guidelines as prepared by the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident;

REALIZING the need to keep the Guidelines under review;

RECALLING the Vienna Convention on Consular Relations, in particular, Article 36 concerning communication and contact with nationals;

NOTING MSC/MEPC.4/Circ.1 on Retention of original records/documents on board ships dated 26 September 2005;

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, in particular articles 97, 228, 230, 232 and 292, and of the customary international law of the sea;

CONSIDERING that the Guidelines provide a code of best practice;

MINDFUL of the need to monitor the application and implementation of the Guidelines;
and

BEARING IN MIND FURTHER, the adoption of the ILO Maritime Labour Convention on 23 February 2006; hereby,

1. ADOPT the Guidelines on fair treatment of seafarers in the event of a maritime accident set out in the annex to the present resolution;

2. INVITE Member Governments to implement these Guidelines as from 1 July 2006;
3. INVITE ALSO Member Governments and non-governmental organizations in consultative status with IMO and ILO to circulate the Guidelines as widely as possible in order to ensure their widespread promulgation and implementation;
4. INVITE, where appropriate, Member Governments to consider amending their national legislation to give full and complete effect to the Guidelines;
5. INVITE FURTHER Member Governments to take note of the principles contained in these Guidelines when considering fair treatment of seafarers in other circumstances where innocent seafarers might be detained; and
6. AGREE on the need to keep the Guidelines under review.

ANNEX

GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

I Introduction

1 It is recommended that these Guidelines be observed in all instances where seafarers may be detained by public authorities in the event of a maritime accident.

2 Seafarers are recognized as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities. The objective of these Guidelines is to ensure that seafarers are treated fairly following a maritime accident and during any investigation and detention by public authorities and that detention is for no longer than necessary.

3 These Guidelines have been prepared in accordance with resolution A.987(24)* on Guidelines on fair treatment of seafarers in the event of a maritime accident adopted on 1 December 2005 by the Assembly of the International Maritime Organization. This resolution is attached at annex to these Guidelines.

4 These Guidelines do not seek to interfere with any State's domestic, criminal, or civil law processes nor the full enjoyment of the basic rights of seafarers, including those provided by international human rights instruments, and the seafarers' right to humane treatment at all times.

5 Seafarers are entitled to protection against coercion and intimidation from any source during or after any investigation into a maritime accident.

6 The investigation of a maritime accident should not prejudice the seafarer in terms of repatriation, lodgings, subsistence, payment of wages and other benefits and medical care. These should be provided at no cost to the seafarer by the shipowner, the detaining State or an appropriate State.

7 These Guidelines do not apply to warships or naval auxiliaries.

II Definitions

8 For the purposes of these Guidelines,

“seafarer” means any person who is employed or engaged or works in any capacity on board a ship;

“shipowner” means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities of the shipowner, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner;

* Not included in this document.

“maritime accident” means any unforeseen occurrence or physical event connected to the navigation, operations, manoeuvring or handling of ships, or the machinery, equipment, material, or cargo on board such ships which may result in the detention of seafarers;

“investigation” means an investigation into a maritime accident;

“detention” means any restriction on the movement of seafarers by public authorities, imposed as a result of a maritime accident, including preventing them leaving the territory of a State other than the seafarer’s country of nationality or residence.

III Guidelines for the port or coastal State

9 The port or coastal State should:

- .1 take steps so that any investigation they conduct to determine the cause of a maritime accident that occurs within their jurisdiction is conducted in a fair and expeditious manner;
- .2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers’ representative organizations in the port or coastal State with access to seafarers;
- .3 take steps to ensure that adequate measures are taken to preserve human rights of seafarers at all times, and the economic rights of detained seafarers;
- .4 ensure that seafarers are treated in a manner which preserves their basic human dignity at all times;
- .5 take steps to ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer including, as appropriate, wages, suitable accommodation, food and medical care;
- .6 ensure that due process protections are provided to all seafarers in a non-discriminatory manner;
- .7 ensure that seafarers are, where necessary, provided interpretation services, and are advised of their right to independent legal advice, are provided access to independent legal advice, are advised of their right not to incriminate themselves and their right to remain silent, and, in the case of seafarers who have been taken into custody, ensure that independent legal advice is provided;
- .8 ensure that involved seafarers are informed of the basis on which the investigation is being conducted (i.e., whether it is in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21) or as subsequently amended), or pursuant to other national legal procedures);

- .9 ensure that the obligations of the Vienna Convention on Consular Relations, including those relating to access, are promptly fulfilled and that the State(s) of the nationality of all seafarers concerned are notified of the status of such seafarers as required, and also allow access to the seafarers by consular officers of the flag State;
- .10 ensure that all seafarers detained are provided with the means to communicate privately with all of the following parties:
 - family members;
 - welfare organizations;
 - the shipowner;
 - trade unions;
 - the Embassy or Consulate of the flag State and of their country of residence or nationality; and
 - legal representatives;
- .11 use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .12 ensure decisions taken pursuant to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) are consistent with the provisions of Annex 1 (Regulations for the prevention of pollution by oil), Regulation 11;
- .13 promptly conduct interviews with seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident;
- .14 take steps to ensure that seafarers, once interviewed or otherwise not required for a coastal State investigation following a maritime accident, are permitted to be re-embarked or repatriated without undue delay;
- .15 consider non-custodial alternatives to pre-trial detention (including detention as witnesses), particularly where it is evident that the seafarer concerned is employed in a regular shipping service to the detaining port or coastal State;
- .16 promptly conclude its investigation and, if necessary, charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge;
- .17 have in place procedures so that any damage, harm or loss incurred by the detained seafarer or by the shipowner, in relation to the detention of that particular seafarer, attributable to the wrongful, unreasonable or unjustified acts or omissions of the detaining port or coastal State are promptly and fully compensated;

- .18 insofar as national laws allow, ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the detained seafarer pending resolution of any investigatory or judicial process;
- .19 take steps to ensure that any court hearing, when seafarers are detained, takes place as expeditiously as possible;
- .20 take steps to ensure decisions taken are consistent with generally applicable provisions of the law of the sea;
- .21 take steps to respect the generally accepted provisions of international maritime law regarding the principle of exclusive flag State jurisdiction in matters of collision or other incidents of navigation; and
- .22 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

IV Guidelines for the flag State

10 The flag State should:

- .1 take steps to ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner;
- .2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- .3 where appropriate, participate directly, under the IMO Code for the Investigation of Maritime Casualties and Incidents (IMO Assembly resolution A.849(20) as amended by resolution A.884(21) and as may be subsequently amended), in any casualty investigation;
- .4 assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any investigation;
- .5 ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer, including, as appropriate, wages, suitable accommodation, food and medical care;
- .6 ensure that shipowners honour obligations to co-operate in any flag, coastal or port State investigation following a maritime accident;
- .7 assist seafarers to secure fair treatment, and assist shipowners in the event of an investigation by a port or coastal State;
- .8 fund the repatriation of seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners fail to fulfil their responsibility to repatriate;

- .9 assist, as provided for in national law, in the issuance and service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
- .10 take steps to ensure that its consular officers are permitted access to the involved seafarers, irrespective of their nationality;
- .11 take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying its flag. This may ultimately include utilizing international dispute resolution mechanisms, which can secure the prompt release of vessels and crews upon the posting of a reasonable bond or financial security; and
- .12 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

V Guidelines for the seafarer State

- 11 The seafarer State should:
 - .1 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
 - .2 monitor the physical and mental well-being and treatment of seafarers of their nationality involved in a maritime accident, including any associated investigations;
 - .3 fund the repatriation of their national seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners and the flag State fail to fulfil their responsibility to repatriate;
 - .4 assist, as provided for in national law, in the service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
 - .5 take steps to ensure that its consular officers are permitted access to the involved seafarers;
 - .6 take steps to provide support and assistance, to facilitate the fair treatment of nationals of the seafarer State and the expeditious handling of the investigation;
 - .7 take steps to ensure that all funds remitted by shipowners, the detaining State, or any other State for detained seafarers, or for support of those seafarers' families, are delivered for the intended purposes; and
 - .8 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

VI Guidelines for shipowners

12 With regard to investigations, shipowners have an overriding duty to protect the rights of the seafarers employed or engaged, including the right to avoid self-incrimination and to take steps to ensure their fair treatment, and should:

- .1 take all available measures to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations and take steps to ensure that such conduct by other entities is not tolerated;
- .2 co-operate and communicate with all substantially interested States, other shipowners, as appropriate, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- .3 take action to expedite the efforts of a port, coastal, or flag State investigation;
- .4 take steps to encourage seafarers and others under their employment, with due regard to any applicable rights, to co-operate with any investigation;
- .5 use all reasonable means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .6 fulfil their obligation in relation to the repatriation of, or take steps to re-embark, the seafarers; and
- .7 ensure/verify that adequate provisions are in place to provide for the subsistence of each seafarer, including, as appropriate, wages, suitable accommodation, food and medical care.

VII Guidelines for seafarers

13 Seafarers should:

- .1 take steps to ensure, if necessary, that they have appropriate interpretation services;
- .2 take steps to ensure that they fully understand their right not to self-incriminate, and that they fully understand that when statements are made to port, coastal or flag State investigators, these may potentially be used in a future criminal prosecution;
- .3 take steps to ensure, if they consider it necessary, that they have arrangements for access to legal advice prior to deciding whether to give statements to port, coastal or flag State investigators; and
- .4 participate in an investigation, to the extent possible, having regard to their right not to self-incriminate, with port, coastal or flag State investigators, by providing truthful information to the best of their knowledge and belief.

ANNEX 3

RESOLUTION LEG.4(91)

(adopted on 27 April 2006)

REVISED ANNEX II TO MARPOL 73/78

**IMPLICATIONS FOR THE REFERENCE IN ARTICLE 1.5(a)(ii) OF THE
HNS CONVENTION TO “NOXIOUS LIQUID SUBSTANCES CARRIED IN BULK”**

THE LEGAL COMMITTEE at its ninety-first session,

RECALLING article 33(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

BEING AWARE that the conditions for the deemed acceptance of the 2004 amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (revised Annex II to MARPOL 73/78), which were adopted at the fifty-second session of the Marine Environment Protection Committee on 15 October 2004, by resolution MEPC.118(52), should be met on 1 July 2006, and that, if so, the revised Annex II of MARPOL 73/78 would enter into force on 1 January 2007,

NOTING that the definition of “noxious liquid substances carried in bulk” in article 1.5(a)(ii) of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), refers to Appendix II of Annex II to MARPOL 73/78, as amended,

NOTING FURTHER that, once it enters into force, the revised Annex II to MARPOL 73/78 will no longer contain Appendix II; nonetheless, that “noxious liquid substances carried in bulk” remain covered by regulation 1.10 of revised Annex II,

DESIRING to ensure that all Contracting States and all States wishing to become Parties to the HNS Convention interpret and implement the Convention in a consistent and uniform manner,

1. URGES Governments concerned to note that, should the conditions for the entry into force of the amendments to Annex II to MARPOL 73/78 as described above be met, and consequent upon the said revision, “noxious liquid substances carried in bulk” in article 1.5(a)(ii) of the HNS Convention will, as from 1 January 2007, refer to noxious liquid substances as defined in regulation 1.10 of the revised Annex II of MARPOL 73/78, which are carried in bulk;
2. REQUESTS the Secretary-General, in accordance with article 53(2)(vii) of the HNS Convention, to transmit certified copies of the present resolution to all States which have signed or acceded to the HNS Convention;
3. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution to the Members of the Organization which have not signed or acceded to the HNS Convention;
4. INVITES Governments to bring this resolution to the attention of all parties concerned.